

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket No. 14227US01)

***In the Application of:***

Kevin T. Chan

***Serial No.:*** 10/612,729

***Filed:*** July 2, 2003

***For:*** METHOD AND SYSTEM FOR  
AUTOMATIC MEDIA DEPENDENT  
INTERFACE RECONFIGURATION AND  
REPAIR

***Examiner:*** Mon Cheri S. Davenport

***Group Art Unit:*** 2462

***Confirmation No.:*** 5781

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Transmitted via the Office electronic filing  
system August 5, 2010

**APPLICATION FOR RECONSIDERATION OF THE  
DETERMINATION OF PATENT TERM ADJUSTMENT  
UNDER 35 U.S.C. 154(b)  
ACCOMPANYING THE NOTICE OF ALLOWANCE  
(37 CFR § 1.705)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

Sir:

The applicant respectfully requests reconsideration of the Determination of Patent Term Adjustment Under 35 U.S.C. 154(b) (PTOL-85) accompanying the Notice of Allowance mailed May 27, 2010 ("the Decision"), to the extent indicated in the following discussion and the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR. This application for reconsideration of the Decision is being filed after the date of mailing of the Notice of Allowance and no later than the payment of the issue fee.

This application for reconsideration of the Decision is accompanied by the fee set forth in § 1.18(e) (\$200).

This application for reconsideration of the Decision includes below a statement of the facts involved in sufficient detail to allow the United States

Patent and Trademark Office (USPTO) to reach the correct patent term adjustment respecting the disputed items.

The Applicant's calculation shows that the correct patent term adjustment should be 1619 days.

The bases under § 1.702 for the adjustment are as follows.

## **Positive Patent Term Adjustment**

### **Three Year Guarantee (35 USC § 154(b)(1)(B))**

The USPTO calculation of the patent term adjustment under the three-year deadline for issuing a patent after its filing date was 0 days. The Applicant disagrees with this determination because the patent term adjustment on this ground should instead be 1004 days, minus 75 days consumed by an appeal, for a net adjustment of 929 days.

Specifically, the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR shows that:

- the actual filing date of the application was July 2, 2003,
- the third anniversary of the actual filing date was July 2, 2006,
- the first request for continued examination of the application (RCE) under 35 USC 132(b) was filed on April 1, 2009.
- the first RCE was filed 1004 days after the third anniversary of the actual filing date, which is the appropriate patent term adjustment on this ground.

The patent term adjustment under the three-year rule was reduced by an appeal.

- review by the Board or a Federal court began on the date the Notice of Appeal was filed, i.e. August 31, 2007,
- the time consumed by review by the Board or a Federal court ended on the date of (1) a Board of Patent Appeals and

Interferences decision, a Federal court decision, or a Board remand, or (2) the date prosecution was reopened, i.e. November 14, 2007,

- the time consumed by the appeal thus ended on November 14, 2007, after an interval of 75 days.
- The patent term adjustment under the three-year rule of 1004 days, reduced by appeal time of 75 days, is thus 929 days.

## **Reductions in Patent Term Adjustment**

### **Removing Overlap**

- Two or more grounds of delay overlap from July 2, 2006, to February 26, 2007, totaling 239 days of delay.
- Two or more grounds of delay overlap from November 30, 2007, to January 24, 2008, totaling 55 days of delay.

This overlap has been subtracted from the patent term adjustment in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR.

### **Three Months to Respond to Office actions (37 CFR § 1.704(b))**

The applicant is contesting the following application(s) of 37 CFR § 1.704(b) to reduce the patent term adjustment in the present application.

#### **Period from October 25, 2008, to October 27, 2008,**

- The pertinent Office action was mailed on July 25, 2008,
- The date three months after the mailing date of the Office action is Saturday, October 25, 2008,
- The response to the Office action was filed on Monday, October 27, 2008,

- The reduction in the patent term adjustment proposed by the USPTO is 2 days,
- The Applicant's position is that the present Office action response filed on the first business day after a deadline falling on a weekend or holiday is not late, establishing the correct reduction in patent term adjustment is 0 days. The basis for this position is 37 CFR § 1.6(a)(1), which states in relevant part, "The Patent and Trademark Office is not open for the filing of correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia," and 37 CFR § 1.7(a), which states in relevant part: "When the day, or the last day fixed by statute or by or under this part for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or on a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding business day which is not a Saturday, Sunday, or a Federal holiday." In this case, 37 CFR § 1.7(a) is applicable because the last day set by statute (35 USC § 154(b)(2)(C)(ii)) for taking the action of filing a response to an Office action without being "deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application," falls on a Saturday, Sunday, or on a Federal holiday within the District of Columbia.

### **Net Patent Term Adjustment**

The changes requested by the Applicant to the USPTO patent term adjustment determination in the Decision are as follows:

### **Positive Patent Term Adjustment**

- **Three Year Guarantee  
(35 USC § 154(b)(1)(B))**

	<b>Patent Term Adjustment (days)</b>
<b>USPTO Calculation</b>	0
<b>Applicant Calculation</b>	929

## **Reductions in Patent Term Adjustment**

- **Removing Overlap**

	<b>Patent Term Adjustment (days)</b>
<b>USPTO Calculation</b>	0
<b>Applicant Calculation</b>	294

- **Three Months to Respond to Office actions  
(37 CFR § 1.704(b))**

	<b>Patent Term Adjustment (days)</b>
<b>USPTO Calculation</b>	2
<b>Applicant Calculation</b>	0

## **Conclusion**

The Applicant requests modification of the patent term adjustment as indicated above. As shown in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR, the patent term adjustment proposed by the Applicant is thus 1619 days.

Please charge any fees or credit any overpayment of fees presently required to McAndrews, Held & Malloy, Ltd., Deposit Account No. 13-0017.

Respectfully submitted,

McANDREWS, HELD & MALLOY, LTD.

Date: August 5, 2010

By: /Hopeton S. Walker/

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Attorney for Applicant

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PATENT TERM ADJUSTMENT SPREADSHEET

Ser. No.

10/612,729

Docket No. 14227US01

DATE	EVENT	PTO Calculation		Applicant Calculation	
		PTO Delay	Appl. Delay	PTO Delay	Appl. Delay
Tuesday, December 07, 2010	Projected issue date				
Thursday, May 27, 2010	Mail Notice of Allowance	12		12.00	
Tuesday, May 25, 2010	Document Verification				
Tuesday, May 25, 2010	Notice of Allowance Data Verification Completed				
Tuesday, May 25, 2010	Case Docketed to Examiner in GAU				
Monday, May 24, 2010	Examiner's Amendment Communication				
Saturday, May 15, 2010	Four month after Notice of Appeal				
Friday, March 12, 2010	Date Forwarded to Examiner				
Friday, March 12, 2010	Mail Appeals conf. Reopen Prosec.				
Friday, March 12, 2010	Pre-Appeals Conference Decision - Reopen Prosecution				
Friday, January 15, 2010	Request for Pre-Appeal Conference Filed				
Friday, January 15, 2010	Notice of Appeal Filed				
Monday, November 23, 2009	Mail Final Rejection (PTOL - 326)	10		10.00	
Friday, November 20, 2009	Final Rejection				
Friday, November 13, 2009	Four months after response to Office action				
Tuesday, October 06, 2009	Case Docketed to Examiner in GAU				

Saturday, September 12, 2009	Date Forwarded to Examiner		
Monday, July 13, 2009	Response after Non-Final Action		
Monday, April 13, 2009	Mail Non-Final Rejection		
Sunday, April 12, 2009	Non-Final Rejection		
Friday, April 03, 2009	Date Forwarded to Examiner		
Friday, April 03, 2009	Date Forwarded to Examiner		
Friday, April 03, 2009	Disposal for a RCE / CPA / R129		
Wednesday, April 01, 2009	Request for Continued Examination (RCE)		
Wednesday, April 01, 2009	Workflow - Request for RCE - Begin		
Thursday, January 29, 2009	Mail Final Rejection (PTOL - 326)		
Thursday, January 29, 2009	Final Rejection		
Monday, November 24, 2008	Date Forwarded to Examiner		
Monday, October 27, 2008	Response after Non-Final Action		2
Saturday, October 25, 2008	Three months after Office action		
Sunday, October 05, 2008	Case Docketed to Examiner in GAU		
Friday, July 25, 2008	Mail Non-Final Rejection		
Monday, July 21, 2008	Non-Final Rejection		
Saturday, April 26, 2008	Date Forwarded to Examiner		
Monday, April 21, 2008	Response after Non-Final Action		

1004.00		
		0









10/612,729	METHOD AND SYSTEM FOR AUTOMATIC MEDIA DEPENDENT INTERFACE RECONFIGURATION AND REPAIR	08-05- 2010::11:10:23
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### Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/612,729

Filing or 371(c) Date:	07-02-2003	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total PTA (days):	982
USPTO Adjustment(days):	-	Explanation Of Calculations	

### Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
05-27-2010	Mail Notice of Allowance	12	
05-25-2010	Document Verification	⬆	
05-25-2010	Notice of Allowance Data Verification Completed	⬆	
05-25-2010	Case Docketed to Examiner in GAU	⬆	
05-24-2010	Examiner's Amendment Communication	⬆	
03-12-2010	Date Forwarded to Examiner	⬆	
03-12-2010	Mail Appeals conf. Reopen Prosec.	⬆	
03-12-2010	Pre-Appeals Conference Decision - Reopen Prosecution	⬆	
01-15-2010	Request for Pre-Appeal Conference Filed	⬆	
01-15-2010	Notice of Appeal Filed	⬆	
11-23-2009	Mail Final Rejection (PTOL - 326)	10	
11-20-2009	Final Rejection	⬆	
10-06-2009	Case Docketed to Examiner in GAU	⬆	
09-12-2009	Date Forwarded to Examiner	⬆	
07-13-2009	Response after Non-Final Action	⬆	
04-13-2009	Mail Non-Final Rejection		
04-12-2009	Non-Final Rejection		
04-03-2009	Date Forwarded to Examiner		
04-03-2009	Date Forwarded to Examiner		
04-01-2009	Request for Continued Examination (RCE)		
04-03-2009	Disposal for a RCE / CPA / R129		
04-01-2009	Workflow - Request for RCE - Begin		
01-29-2009	Mail Final Rejection (PTOL - 326)		
01-29-2009	Final Rejection		
11-24-2008	Date Forwarded to Examiner		
10-27-2008	Response after Non-Final Action		2
10-05-2008	Case Docketed to Examiner in GAU		⬆
07-25-2008	Mail Non-Final Rejection		⬆
07-21-2008	Non-Final Rejection		
04-26-2008	Date Forwarded to Examiner		
04-21-2008	Response after Non-Final Action		

01-24-2008	Mail Non-Final Rejection	55
01-22-2008	Non-Final Rejection	⌆
11-09-2007	Date Forwarded to Examiner	⌆
11-14-2007	Mail Appeals conf. Reopen Prosec.	⌆
11-08-2007	Pre-Appeals Conference Decision - Reopen Prosecution	⌆
08-31-2007	Request for Pre-Appeal Conference Filed	⌆
08-31-2007	Notice of Appeal Filed	⌆
08-16-2007	Mail Advisory Action (PTOL - 303)	⌆
08-15-2007	Advisory Action (PTOL-303)	⌆
08-01-2007	Case Docketed to Examiner in GAU	⌆
08-01-2007	Date Forwarded to Examiner	⌆
07-31-2007	Amendment after Final Rejection	⌆
05-31-2007	Mail Notification of Terminal Disclaimer - Accepted	
05-31-2007	Mail Final Rejection (PTOL - 326)	
05-29-2007	Final Rejection	
05-04-2007	Paralegal TD Accepted	
05-04-2007	Notification of Terminal Disclaimer - Accepted	
04-26-2007	Terminal Disclaimer Filed	
05-03-2007	Date Forwarded to Examiner	
04-26-2007	Response after Non-Final Action	
02-26-2007	Mail Non-Final Rejection	907
02-20-2007	Non-Final Rejection	⌆
11-03-2003	Information Disclosure Statement considered	⌆
08-07-2006	Information Disclosure Statement considered	⌆
02-08-2007	Case Docketed to Examiner in GAU	⌆
02-08-2007	Case Docketed to Examiner in GAU	⌆
12-11-2006	Case Docketed to Examiner in GAU	⌆
08-07-2006	Reference capture on IDS	⌆
08-16-2006	Miscellaneous Incoming Letter	⌆
08-07-2006	Information Disclosure Statement (IDS) Filed	⌆
08-07-2006	Information Disclosure Statement (IDS) Filed	⌆
12-31-2005	Case Docketed to Examiner in GAU	⌆
10-05-2005	IFW TSS Processing by Tech Center Complete	⌆
11-03-2003	Information Disclosure Statement (IDS) Filed	⌆
11-03-2003	Information Disclosure Statement (IDS) Filed	⌆
09-30-2003	Application Return from OIPE	⌆
09-30-2003	Application Return TO OIPE	⌆
09-29-2003	Application Dispatched from OIPE	⌆
09-30-2003	Application Is Now Complete	⌆
09-15-2003	Cleared by OIPE CSR	⌆
07-23-2003	IFW Scan & PACR Auto Security Review	⌆

07-02-2003 Initial Exam Team nn



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